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6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA
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10 JANET SCHULTZ,

11 Plaintiff,

12 v.

13 PACIFIC GAS AND ELECTRIC
14 COMPANY, et al.,

15 Defendants.

Case No. EDCV 16-689-GHK (KK)

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS &
DISMISSING PLAINTIFF'S FIRST
AMENDED COMPLAINT WITH
LEAVE TO AMEND

16
17 I.

18 INTRODUCTION

19 Plaintiff Janet Schultz ("Plaintiff") has filed a pro se First Amended
20 Complaint ("FAC") pursuant to Title 42 of the United States Code, section 1983.
21 Plaintiff alleges Defendants Pacific Gas and Electric Company and Does 1 through
22 10 violated Title 42 of the United States Code, Sections 1983 ("Section 1983") and
23 1985(3) ("Section 1985(3)"). Defendant Pacific Gas and Electric Company
24 ("Defendant") filed a Motion to Dismiss the FAC ("Motion"), which the Court
25 grants for the reasons below.

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1 **II.**

2 **BACKGROUND**

3 On April 13, 2016, Plaintiff filed a civil rights complaint (“Complaint”)
4 alleging Defendant violated (1) the Safe Drinking Water Act (“SDWA”); and (2)
5 Plaintiff’s civil rights under Sections 1983, 1985(3), and 1986. See ECF Docket No.
6 (“Dkt.”) 1, Compl.

7 On June 10, 2016, Plaintiff filed the FAC alleging Defendant violated
8 Plaintiff’s civil rights under Sections 1983 and 1985(3). Dkt. 28, FAC. According
9 to the FAC, Plaintiff owns real property in Hinkley, California. Id. at 6. Plaintiff
10 alleges Defendant failed to remove hexavalent chromium from Hinkley’s aquifers
11 and the aquifers have “connection via private individual water well . . . made by
12 similarly situated Plaintiff(s).” Id. at 7. Plaintiff further alleges Defendant
13 poisoned Hinkley’s aquifers “with URANIUM, in concentration way over 1000%,
14 thus way over the EPA’s legal limits.” Id. at 14. Additionally, Plaintiff alleges
15 Defendant caused the water beneath Plaintiff’s real property, “the only source of
16 ground drinking” water to be “poisoned with ARSENIC, and URANIUM, way
17 over the Federal and State EPA’s legal limits.” Id. at 12. Plaintiff claims to have
18 suffered “irreparable harm health injuries as a direct result of being poisoned with
19 toxic chemicals by Defendant’s operations.” Id. at 6.

20 In addition, Plaintiff alleges Defendant “has performed CONCERTED,
21 I[N]TERTWINED, AND JOIN[T] ACTIVITY’S ACTION with state actors” to
22 poison water in Hinkley. Id. at 7. Plaintiff further alleges Defendant and state
23 actors “conspired for the purpose of depriving Plaintiff(s) of equal protection of
24 the law and for the purpose of preventing and hindering the constituted authorities
25 from giving and securing to Plaintiff(s) equal protection of the law and deprivation
26 of life, liberty and property without due process of law.” Id. at 10. Plaintiff also
27 alleges Defendant was “a willful participant in joint activity with the State or its
28 agents” and violated Plaintiff’s “constitutional rights under color of law, in bad

1 faith, and with malicious purpose in reckless, wanton, and willful disregard of
 2 Plaintiff(s) human, safety, and property rights.” Id. at 4, 8. Plaintiff seeks
 3 monetary damages and costs. Id. at 16-17.

4 On June 28, 2016, Defendant filed the Motion to Dismiss the FAC. Dkt. 29-
 5 1, Mot. Defendant argues: (1) the SDWA preempts Plaintiff’s Section 1983 and
 6 1985(3) claims; (2) Plaintiff “alleges neither membership in a protected class nor
 7 invidious discrimination” in her Section 1985(3) claim; (3) Plaintiff fails to allege
 8 “she suffered injury as a result of [Defendant]’s concerted action with government
 9 actors” in the Section 1983 claim; and (4) Plaintiff’s claims are untimely.¹ Id. at 2-
 10 8. On July 12, 2016, Plaintiff filed an Opposition. Dkt. 34, Opp.; Dkt. 35, Decl.;
 11 Dkt. 36, Mem. Points & Authorities.² On July 21, 2016, Defendant filed a Reply.
 12 Dkt. 38, Reply. This matter is thus submitted for decision.

13 III.

14 LEGAL STANDARD

15 A complaint may be dismissed for failure to state a claim pursuant to Federal
 16 Rule of Civil Procedure 12(b)(6) “where there is no cognizable legal theory or an
 17 absence of sufficient facts alleged to support a cognizable legal theory.” Zamani v.
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19 ¹ Because the Court finds the SDWA preempts Plaintiff’s Section 1983 and
 20 1985(3) claims, the Court declines to address Defendant’s other arguments.

21 ² Plaintiff requests the Court take judicial notice of the following documents,
 22 presumably in support of the Opposition: (1) Holcroft v. Izbicki, 2:16-cv-00528-
 23 DMF (D. Ariz. filed Feb. 25, 2016), Dkt. 35, Judicial Notice; (2) Holcroft v. Izbicki,
 2:16-cv-00528-DMF (D. Ariz. filed Feb. 25, 2016), Dkt. 36, Mot. to Dismiss; (3)
Richards v. Izbicki, 2:16-cv-00346-JCM-PAL (D. Nev. filed Feb. 16, 2016), Dkt. 38,
 Mot. to Dismiss; and (4) Richards v. Izbicki, 2:16-cv-00346-JCM-PAL (D. Nev.
 filed Feb. 16, 2016), Dkt. 40, Notice. Dkt. 37, Req. Judicial Notice.

24 “A court may take judicial notice of ‘matters of public record’ without
 25 converting a motion to dismiss into a motion for summary judgment. But a court
 26 may not take judicial notice of a fact that is ‘subject to reasonable dispute.’” Lee v.
City of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001) (internal citations omitted);
 27 see also Fed. R. Evid. 201(b). As an initial matter, Plaintiff fails to explain what the
 28 documents would prove if the Court granted the request for judicial notice. See
 Dkt. 37, Req. Judicial Notice. Further, to the extent Plaintiff seeks to prove the
 facts asserted in the documents, such facts are subject to reasonable dispute. See
Lee, 250 F.3d at 689. Accordingly, the Court DENIES Plaintiff’s Request for
 Judicial Notice without prejudice.

1 Carnes, 491 F.3d 990, 996 (9th Cir. 2007) (citation and internal quotation marks
2 omitted). In considering whether a complaint states a claim, a court must accept as
3 true all of the material factual allegations in it. Hamilton v. Brown, 630 F.3d 889,
4 892-93 (9th Cir. 2011). However, the Court need not accept as true “allegations
5 that are merely conclusory, unwarranted deductions of fact, or unreasonable
6 inferences.” In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008)
7 (citation and internal quotation marks omitted).

8 Although a complaint need not include detailed factual allegations, it “must
9 contain sufficient factual matter, accepted as true, to state a claim to relief that is
10 plausible on its face.” Cook v. Brewer, 637 F.3d 1002, 1004 (9th Cir. 2011)
11 (citation and internal quotation marks omitted). A claim is facially plausible when
12 it “allows the court to draw the reasonable inference that the defendant is liable for
13 the misconduct alleged.” Id. (citation and internal quotation marks omitted). The
14 complaint “must contain sufficient allegations of underlying facts to give fair notice
15 and to enable the opposing party to defend itself effectively.” Starr v. Baca, 652
16 F.3d 1202, 1216 (9th Cir. 2011).

17 “A document filed pro se is to be liberally construed, and a pro se complaint,
18 however inartfully pleaded, must be held to less stringent standards than formal
19 pleadings drafted by lawyers.” Woods v. Carey, 525 F.3d 886, 889-90 (9th Cir.
20 2008) (citations and internal quotation marks omitted). The Court has “an
21 obligation where the petitioner is pro se, particularly in civil rights cases, to
22 construe the pleadings liberally and to afford the petitioner the benefit of any
23 doubt.” Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012) (citation and internal
24 quotation marks omitted). If, however, a court finds that a pro se complaint has
25 failed to state a claim, dismissal may be with or without leave to amend. Lopez v.
26 Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000).

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1 IV.

2 **DISCUSSION**

3 **THE SDWA PREEMPTS PLAINTIFF'S CIVIL RIGHTS CLAIMS UNDER**
 4 **SECTIONS 1983 AND 1985(3)**

5 **A. STATUTORY PREEMPTION GENERALLY**

6 In determining whether a statute preempts a Section 1983 claim, “[t]he
 7 crucial consideration is what Congress intended.” City of Rancho Palos Verdes,
 8 Cal. v. Abrams, 544 U.S. 113, 120, 125 S. Ct. 1453, 161 L. Ed. 2d 316 (2005).

9 “When the remedial devices provided in a particular Act are sufficiently
 10 comprehensive, they may suffice to demonstrate congressional intent to preclude
 11 the remedy of suits under § 1983.” Middlesex Cty. Sewerage Auth. v. Nat’l Sea
 12 Clammers Ass’n, 453 U.S. 1, 20, 101 S. Ct. 2615, 69 L. Ed. 2d 435 (1981).

13 Additionally, where Congress enacts a statute containing “an express, private
 14 means of redress in the statute itself,” the Court must infer “Congress did not
 15 intend to leave open a more expansive remedy under § 1983.” Abrams, 544 U.S. at
 16 121; see Middlesex Cty. Sewerage Auth., 453 U.S. at 20 (“It is hard to believe that
 17 Congress intended to preserve the § 1983 right of action when it created so many
 18 specific statutory remedies, including the two citizen-suit provisions.”). Similarly,
 19 a statute preempts a Section 1985(3) claim where Congress expresses intent for the
 20 statute to preempt the claim. Great Am. Fed. Sav. & Loan Ass’n v. Novotny, 442
 21 U.S. 366, 375-76, 99 S. Ct. 2345, 60 L. Ed. 2d 957 (1979) (holding Title VII
 22 preempted a Section 1985(3) claim because “[i]f a violation of Title VII could be
 23 asserted through § 1985(3), a complainant could avoid most if not all of these
 24 detailed and specific provisions of the law”).

25 **B. SDWA PREEMPTION**

26 Here, the SDWA establishes “national primary drinking water regulations,”
 27 which “shall apply to each public water system in each State.” 42 U.S.C. § 300g.
 28 The SDWA requires the Environmental Protection Agency Administrator

1 (“Administrator”) to “publish maximum contaminant level goals and promulgate,
 2 by rule, national primary drinking water regulations” Id. § 300g-1. The SDWA
 3 further establishes “an elaborate enforcement scheme,” including that the
 4 Administrator may bring a civil action to compel SDWA compliance orders against
 5 violators of the SDWA. Mattoon v. City of Pittsfield, 980 F.2d 1, 5 (1st Cir. 1992)
 6 (citing 42 U.S.C. § 300g-3(b), (g)(1)). In addition, citizens may initiate
 7 enforcement proceedings against SDWA violators and the Administrator for failure
 8 to perform any non-discretionary duty under the SDWA. 42 U.S.C. § 300j-8.

9 The SDWA’s establishment of an “express, private means of redress”
 10 demonstrates Congress did not intend to leave open a more expansive remedy”
 11 under Section 1983 or 1985(3). See Abrams, 544 U.S. at 121. Hence, “the SDWA
 12 evinces a clear congressional intention to entrust the regulation of public drinking
 13 water systems to an expert regulatory agency rather than the courts.” Mattoon,
 14 980 F.2d at 4-5. Accordingly, the SDWA preempts all other forms of federal relief
 15 for SDWA violations – including claims under Sections 1983 and 1985(3). Id. at 4
 16 (“We have little hesitation in concluding that Congress occupied the field of public
 17 drinking water regulation with its enactment of the SDWA.”); see Ford v.
 18 California, No. 1:10-CV-00696-AWI, 2013 WL 1320807, at *3 (E.D. Cal. Apr. 2,
 19 2013) (“The SDWA preempts all other forms of federal relief for a violation of the
 20 SDWA, including . . . Section 1983 Constitutional right claims.”); Boler v. Early,
 21 No. 16-10323, 2016 WL 1573272, at *3 (E.D. Mich. Apr. 19, 2016) (holding the
 22 SDWA preempts claims under Sections 1983 and 1985(3)).

23 C. APPLICATION

24 Here, Plaintiff alleges Defendant poisoned the water beneath Plaintiff’s real
 25 property, “the only source of ground drinking” water. Dkt. 28, FAC at 12.
 26 Plaintiff alleges Defendant injected uranium and arsenic “way over the Federal and
 27 State EPA’s legal limits” into Plaintiff’s groundwater. Id. However, the SDWA
 28 preempts Plaintiff’s claims under Sections 1983 and 1985(3). See Mattoon, 980

1 F.2d at 4; Ford, 2013 WL 1320807, at *3; Boler, 2016 WL 1573272, at *3. In fact,
2 the SDWA specifically regulates the precise harm Plaintiff alleges – contaminants
3 in public water systems that fail to comply “with any national primary drinking
4 water regulation or may otherwise adversely affect the health of persons.” 42
5 U.S.C. § 300h. Hence, because Congress intended the SDWA to govern
6 compliance “with any national primary drinking water regulation,” the SDWA
7 preempts Plaintiff’s Section 1983 and 1985(3) claims. See id.

8 Plaintiff argues the SDWA has no preemptive effect on the Section 1983 or
9 1985(3) claims because “[t]his action ha[s] nothing to do with ‘citizens suit’ nor
10 with Safe Drinking Water Act.” Dkt. 28, FAC at 6. However, merely omitting
11 nominal reference to the SDWA does not change the fact that the SDWA preempts
12 the substance of Plaintiff’s civil rights claims. See Zombro v. Baltimore City Police
13 Dep’t, 868 F.2d 1364, 1366 (4th Cir. 1989) (finding the Age Discrimination in
14 Employment Act preempted plaintiff’s civil rights claims, even where plaintiff
15 declined to bring his action under the Age Discrimination in Employment Act). If
16 the Court allowed Plaintiff to enforce the SDWA behind a Section 1983 or 1985(3)
17 cloak, Plaintiff could sidestep Congress’ intent to require Plaintiff give notice to
18 prospective defendants of their allegedly unlawful conduct and provide prospective
19 defendants sixty-days to address their error. See 40 C.F.R. § 135.12; see also Great
20 Am. Fed. Sav. & Loan Ass’n, 442 U.S at 376 (finding Title VII preempted Section
21 1985(3) claim because if not, “complainant could completely bypass the
22 administrative process, which plays such a crucial role in the scheme established by
23 Congress in Title VII”).

24 Plaintiff also argues the SDWA has no preemptive effect on the Section 1983
25 or 1985(3) claims because Defendant allegedly poisoned a private well and the
26 SDWA “is only applicable to Public Water System and not to Private Domestic
27 Water Well of the Plaintiff who is not Public Water System owners and/or
28 operators.” E.g., Dkt. 34, Opp. at 6. However, while the SDWA regulates only

1 “public water systems,” the SDWA defines a “public water system” as a system
 2 that has “at least fifteen service connections or regularly serves at least twenty-five
 3 individuals.” 42 U.S.C. § 300f.3 Because Plaintiff alleges Defendant poisoned
 4 underground water in an aquifer with “25 connections” to “the Public Water
 5 System,” Plaintiff has conceded the aquifer is a “public water system” within the
 6 scope of the SDWA. Dkt. 34, Opp. at 5.

7 Accordingly, the SDWA preempts Plaintiff’s civil rights claims under
 8 Sections 1983 and 1985(3), and Plaintiff’s Section 1983 and 1985(3) claims must be
 9 dismissed. See Mattoon, 980 F.2d at 4.

10 V.

11 ORDER

12 Therefore, the Court ORDERS as follows:

13 Defendant’s Motion to Dismiss the FAC is GRANTED. In light of
 14 Plaintiff’s pro se statuses and because it is unclear whether leave to amend would
 15 be futile, the Court DISMISSES the FAC with leave to amend. See Lopez, 203
 16 F.3d at 1126-30.

17 Within **twenty-one (21) days** of this order, Plaintiff must act according to
 18 one of the following options:

19 **1. PLAINTIFF MAY FILE A SECOND AMENDED COMPLAINT**

20 If Plaintiff chooses to file a Second Amended Complaint, Plaintiff must
 21 clearly designate on the face of the document that it is the “Second Amended
 22 Complaint,” it must bear the docket number assigned to this case, and it must be
 23 retyped or rewritten in its entirety. Plaintiff shall not include new defendants or
 24 new allegations that are not reasonably related to the claims asserted in the FAC.
 25 In addition, the Second Amended Complaint must be complete without reference
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27 ³ Further, a legislative report states the SDWA regulates any “public water
 28 system . . . regardless of whether the system is publicly or privately owned or
 operated.” H.R. Rep. No. 93-1185 at 16 (1974).

1 to the Complaint, FAC, or any other pleading, attachment, or document. Plaintiff
2 must comply with Central District of California Local Rules.

3 An amended complaint supersedes the preceding complaint. Ferdik v.
4 Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). After amendment, the Court will
5 treat all preceding complaints as nonexistent. Id. Because the Court grants
6 Plaintiff leave to amend as to all the claims raised here, any claim raised in a
7 preceding complaint is waived if it is not raised again in the Second Amended
8 Complaint. Lacey v. Maricopa Cnty., 693 F.3d 896, 928 (9th Cir. 2012).

9 The Court warns Plaintiff that it generally will not be well-disposed toward
10 another dismissal with leave to amend if Plaintiff files a Second Amended
11 Complaint that continues to include claims on which relief cannot be granted. The
12 Court has already granted Plaintiff opportunities to state the claims and identified
13 Plaintiff's pleading deficiencies. "[A] district court's discretion over amendments
14 is especially broad 'where the court has already given a plaintiff one or more
15 opportunities to amend his complaint.'" Ismail v. County of Orange, 917 F.
16 Supp.2d 1060, 1066 (C.D. Cal. 2012) (citations omitted); see also Ferdik, 963 F.2d
17 at 1261. Thus, if Plaintiff files a Second Amended Complaint without claims on
18 which relief can be granted, the Second Amended Complaint will be dismissed
19 without leave to amend and with prejudice. See Cahill v. Liberty Mut. Ins. Co., 80
20 F.3d 336, 339 (9th Cir. 1996) (denial of leave to amend is not an abuse of discretion
21 where further amendment would be futile); see also Robinson v. California Bd. of
22 Prison Terms, 997 F. Supp. 1303, 1308 (C.D. Cal. 1998) ("Since plaintiff has not,
23 and cannot, state a claim containing an arguable basis in law, this action should be
24 dismissed without leave to amend; any amendment would be futile.") (internal
25 citations omitted).

26 Plaintiff is explicitly cautioned that failure to timely file a Second Amended
27 Complaint will result in this action being dismissed for failure to prosecute and/or
28 obey Court orders pursuant to Federal Rule of Civil Procedure 41(b).

1 **2. PLAINTIFF MAY VOLUNTARILY DISMISS THIS CASE**

2 Alternatively, Plaintiff may request voluntary dismissal of this case. Fed. R.
3 Civ. P. 41(a). If Plaintiff chooses this option, this action will be dismissed in its
4 entirety without prejudice. **The Clerk of Court is directed to mail Plaintiff a**
5 **blank Notice of Dismissal Form.**

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7 Dated: August 02, 2016

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HONORABLE KENLY KIYA KATO
United States Magistrate Judge